



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 3, 2018

The Honorable Joe Moody  
Chair, Committee on Criminal Jurisprudence  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

**Via E-Mail**

Re: Authority and process for removing historical plaques in the Texas Capitol Complex  
(RQ-0226-KP)

Dear Representative Moody:

We received your request for an attorney general opinion and have designated it as Request No. 0226-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180<sup>th</sup> day after the date that an opinion request is received, unless before that date the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE § 402.042(c)(2). We received your request on April 27, 2018, setting a due date for your opinion of October 24, 2018.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefing on your questions if they have a special interest or expertise in the subject matter. If you are aware of other interested parties, please forward this request for briefing to them or let us know, so that we may notify them as soon as possible. We ask that the briefs be submitted by June 5, 2018, to ensure that this office will have adequate time to review and consider arguments relevant to the request from all interested parties. Briefs may be submitted by e-mail to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov). Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Virginia K. Hoelscher".

Virginia K. Hoelscher  
Chair, Opinion Committee

VKH/mma

Attachment: Request No. 0226-KP

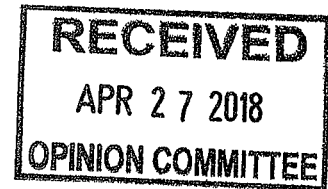
cc: The Honorable Greg Abbott, Governor of Texas  
Mr. Luis Saenz, Chief of Staff, Office of the Governor  
Mr. Andrew Oldham, General Counsel, Office of the Governor  
The Honorable Dan Patrick, Lieutenant Governor of Texas  
Mr. Darrell Davila, Chief of Staff, Office of the Lieutenant Governor  
The Honorable Joe Straus III, Speaker of the House  
Ms. Patricia Shipton, Chief of Staff, Office of the Speaker  
Mr. Jon Schnautz, General Counsel, Office of the Speaker  
Mr. Steven Adrian, Executive Director, Office of the Speaker  
The Honorable Eric Johnson, Texas House of Representatives  
Mr. Rod Welsh, Executive Director, Texas State Preservation Board  
Ms. Ali James, Curator of the Texas State Capitol, Texas State Preservation Board  
Ms. Johanna Meade, General Counsel Division, Office of the Governor



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April 27, 2018

Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548 | Austin, TX 78711-2548  
via email to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov)

FILE # ML-48348-18  
I.D. # 48348  
RQ-0226-KP

re: Request for opinion on removal of "Children of the Confederacy Creed" plaque

Dear General Paxton:

I write on behalf of a committee of a house of the Legislature to request a written opinion on several questions affecting the public interest.

Background

As you may know, the "Children of the Confederacy Creed" plaque (the "Plaque") has been displayed in the Texas Capitol Complex since August 7, 1959. Its stated purpose is to "perpetuate, in love and honor, the heroic deeds of those who enlisted in the Confederate Army," and the installation proclaims the "truths of history (one of the most important of which is, that the war between the states was not a rebellion, nor was its underlying cause to sustain slavery)."

The Plaque is displayed near the office of State Representative Eric Johnson. On August 16, 2017, Representative Johnson delivered a letter to the State Preservation Board—copied to the offices of the governor, lieutenant governor, and speaker of the house—calling for the removal of the Plaque as offensive and historically inaccurate. Speaker Straus soon joined in urging removal of the Plaque on September 19, 2017.

Representative Johnson then submitted a formal building change request form on October 23, 2017 and met with Governor Abbott personally about the issue several days later. No response to the request has been issued and no official action has been taken since.

Applicable Legal Standards

The State Preservation Board consists of "the governor, lieutenant governor, speaker of the house" and appointees from each of those officials. TEX. GOV'T CODE ANN. § 443.003 (West 2012). "The governor is the chairman of the board," which may meet at the call of the governor. *Id.* § 443.004. The board's charge is to "preserve, maintain, and restore the Capitol," including its "contents [and] grounds," as well as to "approve all changes to the buildings and their grounds . . . and any transfers . . . of objects under the curator of the Capitol's care." *Id.* § 443.007 (a)(1) & (4).

The curator of the Capitol is a board employee tasked with oversight of the historical objects and artwork within the Capitol Complex. *Id.* § 443.006. The board is also guided by the Historical Representation Advisory Committee, which is tasked with "ensur[ing] that the diverse history of Texas is accurately represented in the Capitol Complex," particularly in the "historical accuracy of any proposed monument," which should reflect the "equitable



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representation of all Texans, including African slaves [and] African Americans." *Id.* § 443.0081 (a) & (k)(2).

The board has adopted administrative rules which govern changes to the Capitol Complex, including to historical artwork. *See generally* 13 TEX. ADMIN. CODE § 111.16 (1988) (State Preserv. Bd., Changes to the Capitol Building, Capitol Extension Building, General Land Office Building, and Grounds). Change requests "shall be approved in writing," but if a request from a state legislator is denied, the lawmaker "may bring their request before the board at the next open meeting for a final ruling." *Id.* (b)(1) & (5). More specifically, changes to historical artwork "must be approved by the curator of the Capitol." *Id.* (c)(2).

Questions Posed

In light of that background and the broad nature of the relevant statutes and rules, I am asking the Office of the Attorney General for an opinion on the following questions:

1. Which officials or entities have the legal authority to remove or relocate (or order the removal or relocation of) the Plaque?
2. With respect to each of those officials or entities identified in response to question 1, what is the process for removing or relocating the Plaque?
3. May any official or entity, including but not limited to the governor in his capacity as chair of the State Preservation Board, the executive director of the board, and the curator of the Capitol, be compelled through a writ of mandamus or other legal mechanism to (a) respond to a written change request for the Plaque's removal or relocation (such as the one submitted by Representative Johnson), (b) call a meeting of the State Preservation Board, or (c) take any other action related to the Plaque?

I appreciate your thoughtful consideration and look forward to your opinion. Please do not hesitate to contact me if I can be of any further assistance in answering this request.

Respectfully,

JOE MOODY  
Chair, Committee on Criminal Jurisprudence

cc: The Honorable Eric Johnson  
The Honorable Greg Abbott  
The Honorable Dan Patrick  
The Honorable Joe Straus  
State Preservation Board